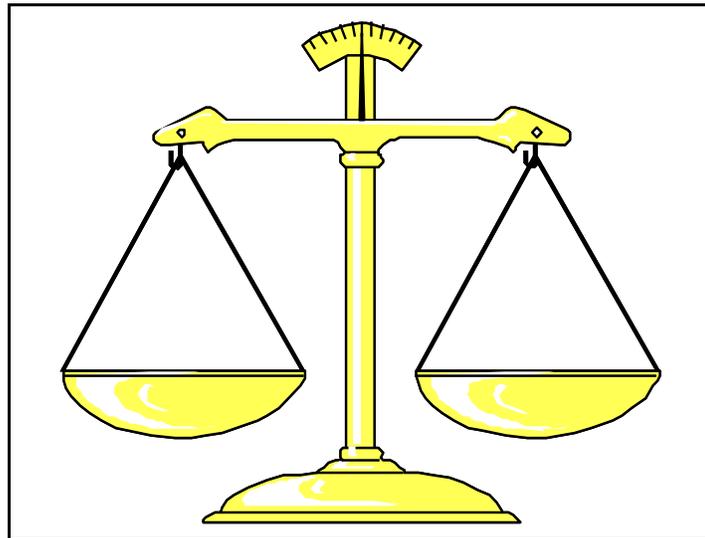


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #2 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2013 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
APRIL 2013***

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION**

**REPORT ON PROPOSED LEGISLATION
PURSUANT TO G.S. 164-43**

This report by the Sentencing Commission includes all bills introduced or amended through April 19, 2013. The report is submitted in conformance with the following requirements of G.S. 164-43:

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f) and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model to the provisions of the bill.

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see* following page for a description of the criteria). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2013.

These summaries may not reflect the most recent bill amendments or committee substitutes. The date on which each individual summary was reviewed is shown on the bottom left hand corner of each summary page. Changes made after this date are not reflected in this report.

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on April 19, 2013.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or

opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to "... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to four classes: class A1, class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

In 2012 the Commission adopted a separate set of classification criteria to be used for reviewing the proposed classification of homicide offenses. These criteria resemble the Commission's harm-based offense classification criteria but rely upon factors other than harm to evaluate the severity of a homicide offense.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury
• Serious societal injury

- G** • Serious property loss
Loss from the person or the person's dwelling

- H** • Serious property loss:
Loss from any structure designed to house or secure any activity or property
Loss occasioned by the taking or removing of property
Loss occasioned by breach of trust, formal or informal
- Personal injury
 - Significant societal injury

- I** • Serious property loss:
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS CRITERIA

(FELONY)

- A** • Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
- B** • Intentional killing with malice.
- D** • Intentional killing with a partial legal excuse.
- E** • Unintentional killing by criminal or culpable negligence with aggravating circumstances.
- F** • Unintentional killing by criminal or culpable negligence.
- H** • Unintentional killing by motor vehicle involving a serious traffic violation.

(MISDEMEANOR)

- A1** • Unintentional killing by motor vehicle involving a traffic violation.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 327/SB 307 – Fire and Rescue Pension Revisions of 2013
[Ed.1]

STATUTE

§15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

Subdivision (d)(9a):

A person who

1. is a firefighter or rescue squad worker, and
2. commits an offense
3. directly related to service as a firefighter or rescue squad worker.

PUNISHMENT RANGE

CURRENT (if applicable): Sentenced from the presumptive range (G.S. 15A-1340.17(c)(2)).

PROPOSED: Sentenced from the aggravated range (G.S. 15A-1340.17(c)(4)).

ANALYSIS

Structured sentencing allows for aggravated sentences.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 333 – Sex Offender Residency/Regis. Amendments [Ed.2]

STATUTE

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

DESCRIPTION

Subsection (a)(1):

A person who

1. is required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes
2. fails to register
3. with the sheriff
4. in the county designated by the person prior to his/her release from custody (pursuant to G.S. 14-208.8) as his/her expected county of residency.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-208.8 governs the prerelease notifications of a sex offender required to register as such upon release from a penal institution.

Amended G.S. 14-208.11(a2) provides that the sex offender shall be subject to the jurisdiction of the prosecutorial and judicial district that includes the sheriff's office in the county were the person failed to register.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 455 – Voting Improvement Act [Ed.1]

STATUTE

§ 163-275. Certain acts declared felonies.

DESCRIPTION

Subdivision (19):

A person who

1. acting under color of law or otherwise
2. corruptly
3. a. hinders, interferes with, or prevents another person from registering to vote, or
b. aids another person in registering to vote
4. in any election.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

An attempt to commit any offense described in G.S. 163-275(19) shall be punished in the same way as the completed offense.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 465 – No Possession of Firearms/Undocumented Aliens
[Ed.1]

STATUTE

§64-6. Possession of firearms by person who are not lawfully present prohibited.

DESCRIPTION

A person who

1. is not lawfully present in the United States
2. possesses a firearm in this State.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 64-6(a) states that for purposes of this section, a person is not lawfully present in the US unless he holds valid documentation issued by or under the authority of the federal government that demonstrates his legal presence in the US or has otherwise been permitted to remain in the US by the federal government.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 465: NO POSSESSION OF FIREARMS/UNDOCUMENTED ALIENS

PREPARED: February 15, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1. This bill amends Article 1 of Chapter 64, Aliens, of the General Statutes by adding a new section, thereby creating a new Class I felony. G.S. 64-6, Possession of firearms by persons who are not lawfully present prohibited, provides that it shall be Class I felony for a person who is not lawfully present in the United States to possess a firearm in this State. For purposes of this section, a person is lawfully present in the United States when he holds valid documentation issued by the United States demonstrating his legal presence in the United States or has otherwise been permitted to remain in the United States by the federal government.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. If, for example, there were eleven Class I convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 589 – VIVA [Ed.2]

STATUTE

§ 163-82.7A. Declaration religious objection to photograph.

DESCRIPTION

A person who

1. at the time of approval of his application to register to vote
2. falsely attests
 - a. before an elections official
 - b. that he holds a sincere religious objection to being photographed.

PROPOSED OFFENSE CLASS

Class I felony, pursuant to G.S. 163-275(13).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 163-82.7A(a) provides that, at the time of approval of the application to register to vote, a voter with a sincerely held religious objection to being photographed may execute a declaration before an elections official to that effect to be incorporated as part of the official record of voter registration.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 589 – VIVA [Ed.2] (cont'd)

STATUTE

§ 163-82.7A. Declaration religious objection to photograph.

DESCRIPTION

A person who

1. at any time after he has registered to vote
2. falsely attests
 - a. before an elections official
 - b. that he holds a sincerely held religious objection to being photographed.

PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 163-82.7A(b) provides that, at any time after the voter has registered to vote that voter has determined that he holds a sincerely held religious objection to being photographed, he may execute a declaration before an elections official to be incorporated as part of the official record of his voter registration.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 589 – VIVA [Ed.2] (cont'd)

STATUTE

§ 20-37.7. Special identification card.

DESCRIPTION

Subdivision (d)(5):

A person who

1. falsely attests
 - a. that he is a registered voter, and
 - b. does not have other photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for a special identification card waived.

PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 20-37.7(d) provides that the fee for a special identification card does not apply in certain instances. G.S. 2037.7(d)(5) also states that any declarations shall prominently include the penalty under G.S. 163-275(13) for falsely making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 589 – VIVA [Ed.2] (cont'd)

STATUTE

§ 130A-93.1. Fees for vital records copies or search; automation fund.

DESCRIPTION

Subsection (c):

A person who

1. falsely or fraudulently attests
 - a. that he is a registered voter, and
 - b. does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for issuing a copy of or doing a search for a vital record waived.

PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 130A-93.1(c) also states that any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 589 – VIVA [Ed.2] (cont'd)

STATUTE

§ 161-10. Uniform fees of register of deeds.

DESCRIPTION

Subdivision (a)(8):

A person who

1. falsely or fraudulently attests
 - a. that he is a registered voter, and
 - b. does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification acceptable under G.S. 163-166.13
2. in order to have the fee for issuing a copy of or doing a search for a vital record waived.

PROPOSED OFFENSE CLASS

Class I felony pursuant to G.S. 163-275(13).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 161-10(a)(8) also states that any declaration shall prominently include the penalty under G.S. 163-275(13) for falsely or fraudulently making the declaration.

Proposed G.S. 163-166.13 provides that every individual voting in person shall present photo identification bearing any reasonable resemblance to that voter to a local election official at the voting place before voting.

G.S. 163-275(13) provides that it shall be a Class I felony for any person, in connection with any primary, general or special election held in this State, to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter, or attempt thereby to secure to any person the privilege of voting.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 589: VIVA.

PREPARED: April 16, 2013

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 6. G.S. 163-82.7A, Declaration religious objection to photograph, is enacted stating that a voter may execute a declaration before an elections official providing that he holds a sincere religious objection to being photographed to be incorporated as part of the official record of voter registration either at the time of approval of the application to register to vote or at any time after the voter has registered to vote if the voter has determined that he holds such sincere religious objection. Subsection (d) provides that all declarations shall include an attestation that the voter holds the sincerely held religious objection to being photographed and require the signature of the voter, under penalty of a Class I felony (pursuant to G.S. 163-275(13)).

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. In addition, the Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-275(13) (felonies in connection with any primary, general or special election). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many offenders might be convicted and sentenced under the proposed bill. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. If, for example, there were eleven Class I convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

This section becomes effective January 1, 2016, and applies to primaries and elections conducted on or after that date.

SECTION 13. G.S. 20-37.7(d) is amended to provide that in order to obtain a special identification card without paying a fee, a registered voter shall sign a sworn statement stating that he is registered and does not have photo identification acceptable under G.S. 163-166.13. The declaration shall prominently contain the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely making the declaration. Existing G.S. 20-37.7(e) provides that it shall be a Class 2 misdemeanor for any person to commit any fraud or misrepresentation in the application for or use of a special identification card issued under G.S. 20-37.7. This amendment expands the scope of the Class 2 misdemeanor by adding this declaration to the acts for which a person may be found guilty under G.S. 20-37.7(e). Further, amended G.S. 20-37.7(d) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which a person may be found guilty of a Class I felony for falsely making or presenting

any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

There were no convictions under G.S. 20-37.7(e) during FY 2011/12. It is not known how many additional convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 29% of Class 2 convictions will result in active sentences, with an average estimated time served of 21 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-275(13). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional Class I convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. If, for example, there were eleven additional Class I convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and one additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 14.(a). The scope of the Class I felony in G.S. 163-275(13) is further expanded by the addition of subsection (c) to G.S. 130A-93.1, Fees for vital records copies or search; automation fund. Proposed G.S. 130A-93.1(c) provides that upon verification of voter registration, the State Registrar shall not charge any fee under G.S. 130A-93.1(a) to a registered voter who signs a declaration stating he is registered to vote in this State and does not have a certified copy of his birth certificate or marriage license necessary to obtain acceptable photo identification pursuant to G.S. 163-166.13. The declaration shall prominently include the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely or fraudulently making the declaration. Thusly, proposed G.S. 130A-93.1(c) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which a person may be found guilty of a Class I felony for falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-275(13). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional Class I convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. If, for example, there were eleven additional Class I convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and one additional prison beds the second year. Due to the lack of historical data under

JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 14.(b) G.S. 161-10(a)(8) is amended to provide that, upon verification of voter registration, a register of deeds, pursuant to G.S. 130A-93, shall issue without charge a certified copy of a birth certificate or marriage license to any registered voter declaring he is registered to vote in this State and does not have a certified copy of his birth certificate or marriage license necessary to obtain photo identification under G.S. 163-166.13. The declaration shall prominently include the Class I felony to which the voter is subject under G.S. 163-275(13) for falsely or fraudulently making the declaration. Thusly, amended G.S. 161-10(a)(8) expands the scope of the Class I felony in G.S. 163-275(13) by adding this declaration to the acts for which a person may be found guilty of a Class I felony for falsely making or presenting any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 163-275(13). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional Class I convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18% of Class I convictions will result in active sentences, with an average estimated time served of 6 months. If, for example, there were eleven additional Class I convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and one additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class I felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Sections 13 and 14 of this act become effective October 1, 2013.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Structured Sentencing Simulation Data.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 685/HB 813/SB 724 – Prohibited Imitation Controlled Substances [Ed.1]

STATUTE

§ 90-94.1. Imitation controlled substances: prohibitions.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. manufactures, delivers, sells, imports into or exports from the State, or
3. possesses with intent to sell, deliver, or manufacture
4. an imitation controlled substance.

PROPOSED OFFENSE CLASS

Class H felony (pursuant to G.S. 90-94.1(g)(1)).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

G.S. 90-94.1(a) defines “imitation controlled substance” as a pill, capsule, tablet, or substance in any form that is not a controlled substance enumerated in Article 90 which is subject to abuse and which purports to act like a controlled substance as a stimulant or depressant and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect unless marketed, promoted, or sold as permitted by the USFDA, and the chemical structure is a derivative of or substantially similar to the chemical structure of a controlled substance.

It shall be a Class 1 misdemeanor for any person to possess for the purpose of causing intoxication or, for the purpose of causing intoxication, to intentionally smell, inhale, inject, ingest or consume in any manner an imitation controlled substance. GS. 90-94.1(c), (d) & (g)(2)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 697 – Shoot Firearm Near School/Increase Penalty [Ed.1]

STATUTE

§ 14-277.6. Discharging certain barreled weapons or a firearm within certain proximity of educational property.

DESCRIPTION

A person who

1. willfully or wantonly
2. discharges or attempts to discharge
3. any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second
4. within 1,000 feet of
5. the boundary of real property used for an elementary or secondary school.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

Note: Some schools in North Carolina may have firing ranges on campus (JROTC programs, FFA riflery programs, etc.)

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 784 – Worthless Check/Present Cashed Check [Ed.1]

STATUTE

§ 14-107. ~~Worthless checks-checks~~; multiple presentment of checks.

DESCRIPTION

Subsection (a)(2):

A person, firm or corporation who

1. draws, makes, utters, or issues and delivers
2. to another
3. any check or draft on any bank or depository
4. for the payment of money or its equivalent
5. knowing at the time of the making, drawing, uttering, issuing and delivering
6. that the maker or drawer
 - a. has previously presented the check or draft
 - b. for the payment of money or its equivalent.

PROPOSED OFFENSE CLASS

Class I felony, if the amount of the check or draft is more than two thousand dollars (\$2,000).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

If the amount of the check or draft is two thousand dollars (\$2,000) or less, a violation is a Class 2 misdemeanor. If the person has been convicted three times of violating this section, on the fourth and all subsequent convictions, violation is a Class 1 misdemeanor and, as a condition of probation, the offender shall refrain from maintain a checking account or making or uttering a check for three years (G.S. 14-107(d)(1))

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 784 – Worthless Check/Present Cashed Check [Ed.1] (cont'd)

STATUTE

§ 14-107. ~~Worthless checks-checks~~; multiple presentment of checks.

DESCRIPTION

Subsection (b)(2):

A person, firm or corporation who

1. solicits or aids and abets
2. any other person, firm or corporation
3. to draw, make, utter or issue and deliver
4. to any person, firm or corporation,
5. any check or draft on any bank or depository
6. for the payment of money or its equivalent
7. being informed, knowing or having reasonable grounds for believing
 - a. at the time of the soliciting or the aiding and abetting
 - b. that the maker or drawer of the check or draft
 - c. has previously presented the check or draft
 - d. for the payment of money or its equivalent.

PROPOSED OFFENSE CLASS

Class I felony, if the amount of the check or draft is more than two thousand dollars (\$2,000).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

If the amount of the check or draft is two thousand dollars (\$2,000) or less, a violation is a Class 2 misdemeanor. If the person has been convicted three times of violating this section, on the fourth and all subsequent convictions, violation is a Class 1 misdemeanor and, as a condition of probation, the offender shall refrain from maintain a checking account or making or uttering a check for three years.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 786 – RECLAIM NC Act [Ed.1]

STATUTE

§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

DESCRIPTION

Subsection (a):

A person who

1. knowingly
2. possesses, manufactures, or sells
3. a false or fraudulent form of identification
4. for the purpose of
5. deception, fraud, or other criminal conduct.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 14-100.1(e) provides certain violations shall be punished as a Class 1 misdemeanor, including a violation based on the mere possession of a false or fraudulent form of identification; a violation by a person under the age of 21 for the purpose of the underage purchase of alcohol; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 786 – RECLAIM NC Act [Ed.1] (cont'd)

STATUTE

§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

DESCRIPTION

Subsection (b):

A person who

1. knowingly
2. obtains a form of identification
3. by the use of false, fictitious, or fraudulent information.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

G.S. 14-100.1(c) provides that possession of a form of identification obtained in violation of G.S. 14-100.1(b) shall constitute a violation of G.S. 14-100.1(a).

G.S. 14-100.1(e) provides certain violations shall be punished as a Class 1 misdemeanor, including a violation based on the mere possession of a false or fraudulent form of identification; a violation by a person under the age of 21 for the purpose of the underage purchase of alcohol; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 786 – RECLAIM NC Act [Ed.1] (cont'd)

STATUTE

§ 20-30. Violations of license, learner's permit, restricted drivers permit, or special identification card provisions.

DESCRIPTION

Subdivision (a)(7):

A person, firm or corporation who

1. sells or offers for sale
2. any reproduction or facsimile or simulation of
3. a driver's license, learner's permit, restricted drivers permit, or special identification card.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

The provisions of G.S. 20-30(a)(7) do not apply to agents or employees of the Division while acting the course and scope of their employment.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 888 – Amend Drug Laws/Ellison v. Treadway [Ed.1]

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h)(4c)a.:

A person who

1. sells, delivers, transports, or possess
2. 200 or more but less than 400
3. pills, tablets, or capsules of a controlled substance that contains
 - a. an opiate, as defined in G.S. 90-87(18),
 - b. combined with a noncontrolled substance that is a commercial drug product with FDA approval manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

PROPOSED OFFENSE CLASS

Class G felony, sentenced to a minimum term of 35 months and a maximum of 42 months, and shall be fined not less than \$25,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person’s dwelling as Class G felonies.

The Offense Classification Criteria were not used in the classification of drug offenses.

G.S. 90-87(18) provides: “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

G.S. 90-95h(4c) provides that any person who sells, delivers, transports, or possess 200 or more pills, tablets, or capsules of a controlled substance described in this subdivision shall be guilty of “trafficking in pharmaceuticals.”

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

Note: In 2012, the General Assembly amended the maximum sentences for Class F through I trafficking offenses to include nine months of post-release supervision. (S.L. 2012-188)

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 888 – Amend Drug Laws/Ellison v. Treadway [Ed.1] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h)(4c)b.:

A person who

1. sells, delivers, transports, or possess
2. 400 or more but less than 600
3. pills, tablets, or capsules of a controlled substance that contains
 - a. an opiate, as defined in G.S. 90-87(18),
 - b. combined with a noncontrolled substance that is a commercial drug product with FDA approval manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

PROPOSED OFFENSE CLASS

Class F felony, sentenced to a minimum term of 70 months and a maximum term of 84 months, and shall be fined not less than \$50,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The Offense Classification Criteria were not used in the classification of drug offenses.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

Note: In 2012, the General Assembly amended the maximum sentences for Class F through I trafficking offenses to include nine months of post-release supervision. (S.L. 2012-188)

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 888 – Amend Drug Laws/Ellison v. Treadway [Ed.1] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subsection (h)(4c)c.:

A person who

1. sells, delivers, transports, or possess
2. 600 or more
3. pills, tablets, or capsules of a controlled substance that contains
 - a. that contains an opiate, as defined in G.S. 90-87(18),
 - b. combined with a noncontrolled substance that is a commercial drug product with FDA approval manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

PROPOSED OFFENSE CLASS

Class D felony, sentenced to a minimum term of 175 months and a maximum term of 219 months, and shall be fined not less than \$200,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

The Offense Classification Criteria were not used in the classification of drug offenses.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

Note: In 2012, the General Assembly amended the maximum sentences for Class B1 through E trafficking offenses, increasing the sentences by three months to include a total of twelve months of post-release supervision. (S.L. 2012-188)

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1]

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

Subdivision (a1)(2):

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever
3. obtain or attempt to obtain
4. from any person
5. any money, goods, property, services, chose in action, or other thing of value
6. with intent to cheat or defraud any person
7. of such money, goods, property, services, chose in action or other thing of value.

PROPOSED OFFENSE CLASS

Class D felony, if the value of the money, goods, property, services, chose in action, or other thing of value is \$80,000 or more, but less than \$100,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

The existing statute provides that if the value of the money, goods, property, services, chose in action, or other thing of value is \$100,000 or more, violation is a Class C felony, and \$100,000 or less, violation is a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1] (cont'd)

STATUTE

§ 140-100. Obtaining property by false pretenses.

DESCRIPTION

Subdivision (a1)(3):

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever
3. obtain or attempt to obtain
4. from any person
5. any money, goods, property, services, chose in action, or other thing of value
6. with intent to cheat or defraud any person
7. of such money, goods, property, services, chose in action or other thing of value.

PROPOSED OFFENSE CLASS

Class E felony, if the money, goods, property, services, chose in action, or other thing of value is \$60,000 or more, but less than \$80,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

The existing statute provides that if the value of the money, goods, property, services, chose in action, or other thing of value is \$100,000 or more, violation is a Class C felony, and \$100,000 or less, violation is a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F or Class G felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1] (cont'd)

STATUTE

§ 140-100. Obtaining property by false pretenses.

DESCRIPTION

Subdivision (a1)(4):

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever
3. obtain or attempt to obtain
4. from any person
5. any money, goods, property, services, chose in action, or other thing of value
6. with intent to cheat or defraud any person
7. of such money, goods, property, services, chose in action or other thing of value.

PROPOSED OFFENSE CLASS

Class F felony, if the money, goods, property, services, chose in action, or other thing of value is \$40,000 or more, but less than \$60,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The existing statute provides that if the value of the money, goods, property, services, chose in action, or other thing of value is \$100,000 or more, violation is a Class C felony, and \$100,000 or less, violation is a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class G felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1] (cont'd)

STATUTE

§ 140-100. Obtaining property by false pretenses.

DESCRIPTION

Subdivision (a1)(5):

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever
3. obtain or attempt to obtain
4. from any person
5. any money, goods, property, services, chose in action, or other thing of value
6. with intent to cheat or defraud any person
7. of such money, goods, property, services, chose in action or other thing of value.

PROPOSED OFFENSE CLASS

Class G felony, if the money, goods, property, services, chose in action, or other thing of value is \$20,000 or more, but less than \$40,000.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

The existing statute provides that if the value of the money, goods, property, services, chose in action, or other thing of value is \$100,000 or more, violation is a Class C felony, and \$100,000 or less, violation is a Class H felony.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1] (cont'd)

STATUTE

§ 140-100. Obtaining property by false pretenses.

DESCRIPTION

Subdivision (a1)(6):

A person who

1. knowingly and designedly
2. by means of any kind of false pretense whatsoever
3. obtain or attempt to obtain
4. from any person
5. any money, goods, property, services, chose in action, or other thing of value
6. with intent to cheat or defraud any person
7. of such money, goods, property, services, chose in action or other thing of value.

PROPOSED OFFENSE CLASS

Class H felony, if the money, goods, property, services, chose in action, or other thing of value is less than \$20,000.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by motor vehicle involving a serious traffic violation as Class H felonies.

The existing statute provides that if the value of the money, goods, property, services, chose in action, or other thing of value is \$100,000 or more, violation is a Class C felony, and \$100,000 or less, violation is a Class H felony.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 908 – Fraud/Increase Penalties [Ed.1] (cont'd)

STATUTE

§ 14-100. Obtaining property by false pretenses.

DESCRIPTION

Subsection (a2):

Any person who

1. is convicted
2. of a second or subsequent offense
3. under G.S. 14-100.

PUNISHMENT RANGE

CURRENT (if applicable): Felony, sentenced from the presumptive range.

PROPOSED: Minimum term of imprisonment shall be increased by 60 months, maximum term shall be the maximum term that corresponds to the increased minimum term.

ANALYSIS

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 937 – Amend Various Firearms Laws [Ed.1]

STATUTE

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed or threatened to use or display a firearm or deadly weapon during the commission of the felony.

DESCRIPTION

A person who

1. is convicted of a felony, and
2. it is found that he:
 - a. committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon, and
 - b. actually possessed the firearm or deadly weapon about his person.

PUNISHMENT RANGE

CURRENT (if applicable): Class A, B1, B2, C, D, or E felony, minimum sentence increased by 60 months, maximum term of imprisonment being the maximum term that corresponds to the minimum term after it is increased by 60 months.

PROPOSED: Class A, B1, B2, C, D, or E felony, minimum sentence increased by 72 months, maximum term of imprisonment being the maximum term that corresponds to the minimum term after it is increased by 72 months.

ANALYSIS

A defendant may be sentenced in the aggravated range, pursuant to G.S. 15A-1340.16(b)(10), when it is found that the defendant was armed with or used a deadly weapon at the time of the crime.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

G.S. 164-41 is not applicable because this is not a substantive offense; however, enhancing the minimum sentence beyond the amount authorized based on the class of the current offense and the offender’s prior record is inconsistent with the structure and principles of Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 937 – Amend Various Firearms Laws [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed or threatened to use or display a firearm or deadly weapon during the commission of the felony.

DESCRIPTION

A person who

1. is convicted of a felony, and
2. it is found that he:
 - a. committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon, and
 - b. actually possessed the firearm or deadly weapon about his person.

PUNISHMENT RANGE

CURRENT (if applicable): Class F or G felony, sentenced from the presumptive range.

PROPOSED: Class F or G felony, minimum sentence increased by 36 months, maximum term of imprisonment being the maximum term that corresponds to the minimum term after it is increased by 36 months.

ANALYSIS

A defendant may be sentenced in the aggravated range, pursuant to G.S. 15A-1340.16(b), when it is found that the defendant was armed with or used a deadly weapon at the time of the crime.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

G.S. 164-41 is not applicable because this is not a substantive offense; however, enhancing the minimum sentence beyond the amount authorized based on the class of the current offense and the offender's prior record is inconsistent with the structure and principles of Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 937 – Amend Various Firearms Laws [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed or threatened to use or display a firearm or deadly weapon during the commission of the felony.

DESCRIPTION

A person who

1. is convicted of a felony, and
2. it is found that he:
 - a. committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon, and
 - b. actually possessed the firearm or deadly weapon about his person.

PUNISHMENT RANGE

CURRENT (if applicable): Class H or I felony, sentenced from the presumptive range.

PROPOSED: Class H or I felony, minimum sentence increased by 12 months, maximum term of imprisonment being the maximum term that corresponds to the minimum term after it is increased by 12 months.

ANALYSIS

A defendant may be sentenced in the aggravated range, pursuant to G.S. 15A-1340.16(b), when it is found that the defendant was armed with or used a deadly weapon at the time of the crime.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

G.S. 164-41 is not applicable because this is not a substantive offense; however, enhancing the minimum sentence beyond the amount authorized based on the class of the current offense and the offender’s prior record is inconsistent with the structure and principles of Structured Sentencing.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 942 – Discharge Firearm With Reckless Disregard [Ed.1]

STATUTE

§ 14-280.3. Discharge a firearm with reckless disregard.

DESCRIPTION

A person who

1. is deliberately bent on mischief
2. discharges a firearm
 - a. in such a reckless and wanton manner
 - b. as to manifest a mind utterly without regard for
 - c. human life and social duty
3. and in so doing
 - a. causes serious injury to another person.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32)

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: HB 942 – Discharge Firearm With Reckless Disregard [Ed.1]
(cont'd)

STATUTE

§ 14-280.3. Discharge a firearm with reckless disregard.

DESCRIPTION

A person who

1. is deliberately bent on mischief
2. discharges a firearm
 - a. in such a reckless and wanton manner
 - b. as to manifest a mind utterly without regard for
 - c. human life and social duty
3. and in so doing
 - a. causes serious bodily injury to another person.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32)

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E or Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 252 – Increase Penalty/Controlled Substance Crimes [Ed.1]

STATUTE

§ 90-108. Prohibited acts; penalties.

DESCRIPTION

A person who

1. violates subsection (a) and
2. commits the violation intentionally.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class G felony.

ANALYSIS

Violation is a Class 1 misdemeanor if it was not committed intentionally.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person’s dwelling as Class G felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

The Offense Classification Criteria were not used in the classification of drug offenses.

G.S. 90-108(a) makes it unlawful for a person:

- (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this Chapter to represent to any registrant or practitioner who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this State;
- (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or 90-106;
- (3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its successor;
- (5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this Article;
- (6) To refuse any entry into any premises or inspection authorized by this Article;
- (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled

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- substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article;
- (8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105;
 - (9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
 - (10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;
 - (11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this Article;
 - (12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
 - (13) To obtain controlled substances through the use of legal prescriptions which have been obtained by the knowing and willful misrepresentation to or by the intentional withholding of information from one or more practitioners;
 - (14) Who is an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances by virtue of his employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use any controlled substance which shall have come into his possession or under his care.

Sale of a Schedule I or II controlled substance is a Class G felony. (G.S. 90-95(b)(1))

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 286 – Mandate Use/Controlled Sub. Reporting System [Ed.1]

STATUTE

§ 90-113.74A. Mandatory use of controlled substances reporting system.

DESCRIPTION

A person who

1. is authorized to prescribe or dispense a controlled substance for the purpose of providing medical or pharmaceutical care for a patient
2. does not, prior to prescribing or dispensing a controlled substance, review all information pertaining to the patient in the controlled substances reporting system for the preceding 12-month period to determine if the prescription is medically necessary and appropriate.

PROPOSED OFFENSE CLASS

Class I felony if the violation was committed intentionally (Class 1 misdemeanor if it was not committed intentionally).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

The Offense Classification Criteria were not used in the classification of drug offenses.

The Department of Health and Human Services is required to establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances.

G.S. 90-113.52A, Electronic record keeping, requires a retailer, before completing a sale of a product containing a pseudoephedrine product, to electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). A willful and knowing violation is a Class A1 misdemeanor for the first offense and a Class I felony for the second and subsequent offense. (G.S. 90-113.56)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 342 – Amend Gun Laws [Ed.1]

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a):

A person who

1. who has been convicted of a felony
2. carries a concealed weapon, including a tear gas gun or similar device intended to be used as a weapon.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

Carrying a concealed pistol or gun without a permit is a Class 2 misdemeanor for the first offense and a Class I felony for the second or subsequent offense. (G.S. 14-269(a1)).

Carrying a concealed weapon other than a pistol or gun is a Class 2 misdemeanor. (G.S. 14-269(a)).

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant societal injury as Class H felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 342 – Amend Gun Laws [Ed.1] (cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subdivision (a1)(2):

A person who

1. violates G.S. 14-415.1 and
2. discharges the firearm, electric weapon or device.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Discharging certain barreled weapons or a firearm into any property is a Class E felony. (G.S. 14-34.1(a)) If the property is occupied, it is a Class D felony. (G.S. 14-34.1(b))

Discharging a firearm from within an enclosure, as part of a pattern of criminal street gang activity, toward a person or persons not within that enclosure is a Class E felony. (G.S. 14-34.9)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 342 – Amend Gun Laws [Ed.1] (cont’d)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subdivision (a1)(3):

A person who

1. violates G.S. 14-415.1 and
2. the violation results in serious injury to a person.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

“Serious injury” is defined in this section as “a lesser degree of physical harm than serious bodily injury which includes, but is not limited to, bruises, lacerations, sprains, broken bones, or any other indications of physical injury of a type which do not constitute serious bodily injury.”

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 342 – Amend Gun Laws [Ed.1] (cont’d)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subdivision (a1)(4):

A person who

1. violates G.S. 14-415.1 and
2. the violation results in serious bodily injury to a person.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“Serious injury” is defined in this section as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” (The definition is taken from G.S. 14-32.4(a)).

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4(a))

Assault with a deadly weapon with intent to kill inflicting serious injury is a Class C felony. (G.S. 14-32(a))

Discharging certain barreled weapons or a firearm into any property that results in serious bodily injury to any person is a Class C felony. (G.S. 14-34.1(c))

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 410 – Enabling Heroes Act of 2013 [Ed.1]

STATUTE

§ 14-269A. Carrying concealed weapons.

DESCRIPTION

A person who

1. carries concealed about his or her person
2. any deadly weapon
3. for any illegal purpose.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense, a Class I felony for the second or subsequent offense.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 411 – Ethics Requirements for MPOs/RPOs [Ed.2]

STATUTE

§ 136-200.2. Decennial review of metropolitan planning organization boundaries, structure, and governance.

DESCRIPTION

A person who

1. a. is serving on a metropolitan planning organization,
b. has voting authority, and
c. is not a member of the Board of Transportation
2. provides false information on a required filing
3. knowing that the information is false.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

G.S. 136-200.2(g)(3) requires an MPO member to file a statement of economic interest with the State Ethics Commission and an additional disclosure of a list of all real estate owned wholly or in part by the MPO member, the MPO member's extended family, or a business with which the MPO member is associated within the jurisdiction of the MPO on which the MPO member is serving.

Providing false information on a statement of economic interest with the State Ethics Commission is a Class H felony. (G.S. 138A-27)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 411 – Ethics Requirements for MPOs/RPOs [Ed.2] (cont'd)

STATUTE

§ 136-211. Department authorized to establish Rural Transportation Planning Organizations.

DESCRIPTION

A person who

1. a. is serving on a rural transportation planning organization,
b. has voting authority, and
c. is not a member of the Board of Transportation
2. provides false information on a required filing
3. knowing that the information is false.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

G.S. 136-211(f)(3) requires an RPO member to file a statement of economic interest with the State Ethics Commission and an additional disclosure of a list of all real estate owned wholly or in part by the RPO member, the RPO member's extended family, or a business with which the RPO member is associated within the jurisdiction of the RPO on which the RPO member is serving.

Providing false information on a statement of economic interest with the State Ethics Commission is a Class H felony. (G.S. 138A-27)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 465 – Prohibit Use of Tax-Zapper Software [Ed.1]

STATUTE

§14-118.7. Possession, transfer, or use of automated sales suppression device.

DESCRIPTION

A person who

1. knowingly sells, purchases, installs, transfers, possesses, uses, or accesses
2. any automated sales suppression device, zapper or phantom-ware.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

Automated sales suppression device or zapper is defined in G.S. 14-118.7(a)(1) as a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems. The term includes the software program, any device that carries the software program, or an internet link to the software program.

Phantom-ware is defined in G.S. 14-118.7(a)(3) as a hidden programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a second set of records or may eliminate or manipulate transaction records, which may or may not be preserved in digital formats, to represent the true or manipulated record of transactions in the electronic cash register.

The Commission reviewed an identical provision in SB 854 in June 2012 and found this provision to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE (PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: SB 584 – Amend False Liens Law [Ed.1]

STATUTE

§ 14-118.6. Filing false lien or encumbrance.

DESCRIPTION

A person who

1. files in a
 - a. public record or
 - b. private record generally available to the public
2. a false lien or encumbrance
 - a. against the property of a public officer, public employee, or an immediate family member of the public officer or public employee
 - b. on account of the performance of the officer or employee's official duties
3. knowing or having reason to know that the lien or encumbrance
 - a. is false or
 - b. contains a materially false, fictitious, or fraudulent statement or representation.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

“Immediate family member” is defined as a spouse or child.

The Sentencing Commission reviewed the current version of the offense in HB 203 [Ed.2] in June 2012 and found it to be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1]

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subsection (d)(1):

A person who

1. willfully,
2. with intent to injure or defraud,
3. commits any of the acts listed in G.S. 14-151(a)(1) through (8).

OFFENSE CLASS

CURRENT: Class 2 misdemeanor.

PROPOSED: Class F felony.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-151(a)(1) through (8) prohibit a person from doing any of the following:

- (1) Connect a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or other instrument provided for registering the quantity consumed; or,
- (2) Obstruct, alter, bypass, tamper with, injure or prevent the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas, water, or electricity passing through such meter by a person other than an employee of the company owning or supplying any, water, or electric meter, who willfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any meter so detached or disconnected; or,
- (3) In any manner whatever change, extend or alter any service or other pipe, wire or attachment of any kind, connecting with or through which natural or artificial gas or electricity is furnished from the gas mains or pipes of any person, without first procuring from said person written permission to make such change, extension or alterations; or,
- (4) Make any connection or reconnection with the gas mains, water pipes, service pipes or wires of any person, furnishing to consumers natural or artificial gas, water, or electricity, or turn on or off or in any manner interfere with any valve or stopcock or other appliance belonging to such person, and connected with his service or other pipes or wires, or enlarge the orifices of mixers, or use natural gas for heating purposes except through mixers, or electricity for any purpose without first procuring from such person a written permit to turn on or off such stopcock or valve, or to make such

connection or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stopcocks, wires or other appliances of such, as the case may be; or,

- (5) Retain possession of or refuse to deliver any mixer, meter, lamp or other appliance which may be leased or rented by any person, for the purpose of furnishing gas, water, electricity or power through the same, or sell, lend or in any other manner dispose of the same to any person other than such person entitled to the possession of the same; or,
- (6) Set on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person in conveying gas to consumers, or interfere in any manner with the wells, pipes, mains, gateboxes, valves, stopcocks, wires, cables, conduits or any other appliances, machinery or property of any person engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person; or,
- (7) Open or cause to be opened, or reconnect or cause to be reconnected any valve lawfully closed or disconnected by a district steam corporation; or
- (8) Turn on steam or cause it to be turned on or to reenter any premises when the same has been lawfully stopped from entering such premises.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1]

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(9), sub-subdivision (d)(2)a-c:

A person who

1. willfully,
2. with intent to injure or defraud,
3. reconnects electricity, gas, or water connections or otherwise turns back on one or more of those utilities
4. when they have been lawfully disconnected or turned off by the provider of the utility.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense.

Class H felony for the second offense, whether or not the first offense was a violation of a different subdivision.

Class G felony for the third offense, whether or not the second offense was a violation of a different subdivision.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1] (cont'd)

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(9), sub-subdivision (d)(2)d:

A person who

1. willfully,
2. with intent to injure or defraud,
3. reconnects electricity, gas, or water connections or otherwise turns back on one or more of those utilities
4. when they have been lawfully disconnected or turned off by the provider of the utility, and
5. it results in significant property damage or public endangerment.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1] (cont'd)

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(9), sub-subdivision (d)(2)e:

A person who

1. willfully,
2. with intent to injure or defraud,
3. reconnects electricity, gas, or water connections or otherwise turns back on one or more of those utilities
4. when they have been lawfully disconnected or turned off by the provider of the utility, and
5. it results in the death of another.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

FINDINGS

Bill is **consistent** with the Homicide Offense Classification Criteria.

Bill is **inconsistent** with the Homicide Offense Classification Criteria.

Homicide Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1] (cont'd)

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(10), sub-subdivision (d)(2)a-c:

A person who

1. willfully,
2. with intent to injure or defraud,
3. alters, bypasses, interferes with, or cuts off
4. any load management device, equipment, or system which has been installed by the electricity supplier for the purpose of limiting the use of electricity at peak-load periods.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense.

Class H felony for the second offense, whether or not the first offense was a violation of a different subdivision.

Class G felony for the third offense, whether or not the second offense was a violation of a different subdivision.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

The bill excludes situations where there has been a written request to remove the load management device, equipment, or system to the electric supplier and the electric supplier has not removed the device within two working days.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1] (cont'd)

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(10), sub-subdivision (d)(2)d:

A person who

1. willfully,
2. with intent to injure or defraud,
3. alters, bypasses, interferes with, or cuts off
4. any load management device, equipment, or system which has been installed by the electricity supplier for the purpose of limiting the use of electricity at peak-load periods, and
5. it results in significant property damage or public endangerment.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 634 – Increase Penalties/Gas Theft [Ed.1] (cont'd)

STATUTE

§ 14-151. Interfering with gas, electric and steam appliances or meters; penalties.

DESCRIPTION

Subdivision (a)(10), sub-subdivision (d)(2)e:

A person who

1. willfully,
2. with intent to injure or defraud,
3. alters, bypasses, interferes with, or cuts off
4. any load management device, equipment, or system which has been installed by the electricity supplier for the purpose of limiting the use of electricity at peak-load periods, and
5. it results in the death of another.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

FINDINGS

- Bill is **consistent** with the Homicide Offense Classification Criteria.
- Bill is **inconsistent** with the Homicide Offense Classification Criteria.
- Homicide Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 648 – NC Commerce Protection Act of 2013 [Ed.1]

STATUTE

§ 14-105.1. Employment fraud.

DESCRIPTION

Subsection (a):

A person who

1. willfully
2. a. makes false statements or representations or
b. fails to disclose requested information
3. as part of an employment application
4. that the person knows to be false or incomplete
5. for the purpose of gaining access to the employer's facilities to do any of the following:
 - a. To create or produce a record that reproduces an image or sound occurring within the employer's facility, including a photographic, video, or audio medium record.
 - b. To capture or remove data, paper, records, or any other documents through duplication, downloading, image capture, electronic mail, electronic transfer, or other means.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense, a Class I felony for the second or subsequent offense.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 648 – NC Commerce Protection Act of 2013 [Ed.1] (cont'd)

STATUTE

§ 14-105.1. Employment fraud.

DESCRIPTION

Subsection (c):

A person who

1. fails to turn over
2. any recording made or information obtained pursuant to subsection (a) of this section
3. to local law enforcement
4. within 24 hours of recording or procurement.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense, a Class I felony for the second or subsequent offense.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 676 – 10 Yr. Min. for 2nd Gun Felony Conviction [Ed.1]

STATUTE

Article 3D, Armed Habitual Felon, of Chapter 14 of the General Statutes.

DESCRIPTION

A person who

1. has been convicted of or pled guilty to one or more prior firearm-related felony offenses,
2. is convicted of a firearm-related felony offense, and
3. is found to be a status offender.

PROPOSED OFFENSE CLASS

Sentenced as a Class C felon (unless the person was sentenced as a Class A, B1, or B2 felon).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“Firearm-related felony” is defined as any felony committed by a person in which the person used or displayed a firearm while committing the felony.

The Article does not apply if the evidence of the use or display of the firearm is needed to prove an element of the firearm-related felony.

“Status offender” is defined as a person who is an armed habitual felon.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 676 – 10 Yr. Min. for 2nd Gun Felony Conviction [Ed.1]
(cont'd)

STATUTE

Article 3D, Armed Habitual Felon, of Chapter 14 of the General Statutes.

DESCRIPTION

A person who

1. has been convicted of or pled guilty to one or more prior firearm-related felony offenses,
2. is convicted of a firearm-related felony offense, and
3. is found to be a status offender.

PUNISHMENT RANGE

CURRENT: The minimum and maximum sentences that would be authorized for the class of the principal felony and the offender’s prior record level.

PROPOSED: Notwithstanding any other provision of law, a person sentenced under this Article shall serve either

- (i) a minimum term of imprisonment of 120 months and a maximum term of 156 months or
- (ii) the minimum and maximum terms of imprisonment that would be imposed for the principal firearm-related felony pursuant to G.S. 15A-1340.17, whichever is greater.

ANALYSIS

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

Aggravating factor – The defendant was armed with or used a deadly weapon at the time of the crime. (G.S. 15A-1340.16(d)(10))

Enhancement – If a person is convicted of a Class A, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm or deadly weapon, and the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced increased by 60 months. (G.S. 15A-1340.16A)

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]

STATUTE

§ 14-43.11. Human trafficking.

DESCRIPTION

Subdivision (i):

A person who

1. a. knowingly or
 b. in reckless disregard of the fact
2. recruits, entices, harbors, transports, provides, or obtains by any means
3. another person
4. with the intent that the other person be held in involuntary servitude or sexual servitude.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

FINDINGS



Bill is **consistent** with the Offense Classification Criteria.



Bill is **inconsistent** with the Offense Classification Criteria.



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-43.11. Human trafficking.

DESCRIPTION

Subdivision (ii):

A person who

1. a. knowingly or
b. in reckless disregard of the fact
2. causes a minor to be held in involuntary servitude or sexual servitude.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

A violation of G.S. 14-43.11 is a Class F felony (proposed Class E felony) if the victim of the offense is an adult. Subdivision (ii) requires that the victim be a minor; therefore, the Class F felony is not applicable.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-43.12. Involuntary servitude.

DESCRIPTION

A person who

1. a. knowingly and willfully or
 b. in reckless disregard
2. holds
3. another
4. in involuntary servitude.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE CLASS OF AN EXISTING OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-43.13. Sexual servitude.

DESCRIPTION

A person who

1. a. knowingly or
b. in reckless disregard
2. a. subjects or
b. maintains
3. another
4. in sexual servitude.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies.

Violation of this section is a Class C felony if the victim is a minor. This bill does not change that classification.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/19/13

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.3. Solicitation of a sexual act.

DESCRIPTION

A person who

1. offers
2. a person who is not his or her spouse
3. any money, property, token, object, or article or anything of value
4. for
 - a. that person or
 - b. any other person who is not his or her spouse
5. to perform
 - a. any sexual act, or
 - b. any touching or fondling of the sex organs of one person by another person
6. for the purpose of sexual arousal or gratification.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

“Sexual act” is defined in G.S. 14-27.1.

Soliciting for prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208) Prostitution is “the offering or receiving of the body for sexual intercourse for hire... [or] for indiscriminate sexual intercourse without hire.” (G.S. 14-203)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

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**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.3. Solicitation of a sexual act.

DESCRIPTION

A person who

1. offers
2. a person who is not his or her spouse
3. any money, property, token, object, or article or anything of value
4. for
 - a. a minor or
 - b. a person who is severely or profoundly mentally disabled
5. to perform
 - a. any sexual act, or
 - b. any touching or fondling of the sex organs of one person by another person
6. for the purpose of sexual arousal or gratification.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

Soliciting a minor to participate in prostitution is a Class F felony. (G.S. 14-190.19) Prostitution is defined as “[e]ngaging or offering to engage in sexual activity with or for another in exchange for anything of value.” (G.S. 14-190.13(4)) “Sexual activity” is defined in G.S. 14-190.4(5).

“Severely or profoundly mentally disabled” is not defined in the statute.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Subdivisions (a)(1), (b)(1):

A person who

1. knowingly
2. advances prostitution as defined in G.S. 14-203.1.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-203.1. Definitions.

Advance prostitution. - The term includes all of the following:

- a. Soliciting for a prostitute by performing any of the following acts when acting other than a prostitute or a patron of a prostitute:
 1. Soliciting another for the purpose of prostitution.
 2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
 3. Directing another to a place knowing the direction is for the purpose of prostitution.
 4. Using the Internet, including any social media website, to solicit another for the purpose of prostitution.
- b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than a prostitute or a patron of a prostitute:
 1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
 2. Granting or permitting the use of the place under circumstances from which the person could reasonably know that the place is used or is to be used for purposes of prostitution.
 3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

Various acts related to promoting prostitution are Class 1 misdemeanors. (G.S. 14-204, -208)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony or a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Subdivisions (a)(1), (b)(1):

A person who

1. knowingly
2. advances prostitution as defined in G.S. 14-203.1
3. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

See Analysis above for a definition of “advancing prostitution” under G.S. 14-203.1.

“School” is not defined in the statute.

Various acts related to promoting prostitution are Class 1 misdemeanors. (G.S. 14-204, -208)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony or a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury or in significant societal injury as Class H felonies.

Note: “School” is not defined in the statute.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Subdivisions (a)(1), (b)(1):

A person who

1. knowingly
2. advances prostitution as defined in G.S. 14-203.1.

PROPOSED OFFENSE CLASS

Class C felony for the second or subsequent violation.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

See Analysis above for a definition of “advancing prostitution” under G.S. 14-203.1.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Subdivision (b)(1):

A person who has any combination of convictions under:

1. a. G.S. 14-203.4(a)(1) (advancing prostitution – Class F, C),
b. 14-203.4(a)(2)a. (profiting from prostitution by compelling prostitution – Class F, C), or
c. 14-203.4(a)(2)b. (profiting from prostitution by arranging a situation for practicing prostitution – Class F, C) and
2. a. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
b. G.S. 14-203.3 (solicitation of a sexual act – Class F, C),
c. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1),
d. G.S. 14-203.6 (patronizing a prostitute – Class F, C), or
e. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“Combination of convictions” is not defined in the statute. It is not known whether the convictions must be for current offenses or current and prior offenses.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)a, subdivision (b)(2):

A person who

1. knowingly
2. profits from prostitution
3. by compelling a person to become a prostitute.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury or in significant societal injury as Class H felonies.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)a, subdivision (b)(2):

A person who

1. knowingly
2. profits from prostitution
3. by compelling a person to become a prostitute
4. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“School” is not defined in the statute.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Note: “School” is not defined in the statute.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)b, subdivision (b)(2):

A person who

1. knowingly
2. profits from prostitution by
3. a. arranging or
b. offering to arrange
4. a situation in which a person may practice prostitution.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)b, subdivision (b)(2):

A person who

1. knowingly
2. profits from prostitution by
3. a. arranging or
b. offering to arrange
4. a situation in which a person may practice prostitution
5. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“School” is not defined in the statute.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Note: “School” is not defined in the statute.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)c, subdivision (b)(3):

A person who

1. knowingly
2. profits from prostitution by
3. any means other than those described in sub-subdivisions a. and b., including from a person who patronizes a prostitute.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S 14-203.2.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

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74 A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

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**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)c, subdivision (b)(3):

A person who

1. knowingly
2. profits from prostitution by
3. any means other than those described in sub-subdivisions a. and b., including from a person who patronizes a prostitute
4. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S 14-203.2.

“School” is not defined in the statute.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Note: “School” is not defined in the statute.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Sub-subdivision (a)(2)c, subdivision (b)(3):

A person who

1. knowingly
2. profits from prostitution by
3. any means other than those described in sub-subdivisions a. and b., including from a person who patronizes a prostitute

PROPOSED OFFENSE CLASS

Class C felony for the second or subsequent violation.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S 14-203.2.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.4. Promoting prostitution.

DESCRIPTION

Subdivision (b)(3):

A person who has any combination of convictions under:

1. G.S. 14-203.4(a)(2)c. (profiting from prostitution by any other means – Class F, C) and
2. a. G.S. 14-203.4(a)(1) (advancing prostitution – Class F, C),
b. G.S. 14-203.4(a)(2)a. (profiting from prostitution by compelling prostitution – Class F, C), or
c. G.S. 14-203.4(a)(2)b. (profiting from prostitution by arranging a situation for practicing prostitution – Class F, C),
d. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
e. G.S. 14-203.3 (solicitation of a sexual act – Class F, C),
f. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1), or
g. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“Combination of convictions” is not defined in the statute. It is not known whether the convictions must be for current offenses or current and prior offenses.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subdivision (a)(1), subsection (c):

A person who

1. knowingly
2. advances prostitution as defined G.S. 14-203.1
3. a. where the minor engaged in prostitution, or
b. any person engaged in prostitution in the place is a minor or is severely or profoundly mentally disabled at the time of the offense.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

See summary above for a definition of “advancing prostitution” under G.S. 14-203.1

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

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BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subdivision (a)(1), subsection (c):

A person who

1. knowingly
2. advances prostitution as defined G.S. 14-203.1
3. a. where the minor engaged in prostitution, or
b. any person engaged in prostitution in the place is a minor or is severely or profoundly mentally disabled at the time of the offense
4. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

“School” is not defined in the statute.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

Note: “School” is not defined in the statute.

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(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subdivision (a)(2), subsection (c):

A person who

1. knowingly
2. profits
3. from prostitution
4. by any means where the prostituted person is a minor or is severely or profoundly mentally disabled at the time of the offense.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

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(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subdivision (a)(3), subsection (c):

A person who

1. knowingly
2. confines
3. a. a minor or
b. a severely or profoundly mentally disabled person
4. against the person's will
5. a. by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or
b. by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and
6. does any of the following:
 - a. Compels the child or severely or profoundly mentally disabled person to engage in prostitution.
 - b. Arranges a situation in which the child or severely or profoundly mentally disabled person may practice prostitution.
 - c. Profits from prostitution by the child or severely or profoundly mentally disabled person.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

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A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support for or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subsection (c):

A person who

1. knowingly
2. violates G.S. 14-203.5(a)(1), (2), or (3).

PROPOSED OFFENSE CLASS

Class B1 felony for a second or subsequent violation.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.5. Promoting prostitution of a minor.

DESCRIPTION

Subsection (c):

A person who has any combination of convictions under:

1. a. G.S. 14-203.5(a)(1) (advance prostitution of a minor – Class B2, B1),
b. G.S. 14-203.5(a)(2) (profit from prostitution of a minor – Class B2, B1), or
c. G.S. 14-203.5(a)(3) (confine a minor to compel, arrange, or profit from their prostitution – Class B2, B1) and
2. a. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
b. G.S. 14-203.3 (solicitation of a sexual act – Class F, C),
c. G.S. 14-203.4 (promoting prostitution – Class F, C),
d. G.S. 14-203.6 (patronizing a prostitute – Class B2, B1) , or
e. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

“Combination of convictions” is not defined in the statute. It is not known whether the convictions must be for current offenses or current and prior offenses.

Promoting prostitution of a minor is a Class C felony. (G.S. 14-190.18)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.6. Patronizing a prostitute.

DESCRIPTION

A person who

1. knowingly
2. a. engages in a sexual act with a prostitute,
b. enters or remains in a place of prostitution with intent to engage in a sexual act,
c. engages in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification, and
3. the person is not his or her spouse.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.6. Patronizing a prostitute.

DESCRIPTION

A person who

1. knowingly
2. a. engages in a sexual act with a prostitute,
b. enters or remains in a place of prostitution with intent to engage in a sexual act,
d. engages in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification,
3. the person is not his or her spouse, and
4. commits the offense within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“School” is not defined in the statute.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class F felony or a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury, or in significant societal injury as Class H felonies.

Note: “School” is not defined in the statute.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.6. Patronizing a prostitute.

DESCRIPTION

A person who

1. knowingly
2. a. engages in a sexual act with a prostitute,
b. enters or remains in a place of prostitution with intent to engage in a sexual act, or
c. engages in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification, and
3. the person is not his or her spouse.

PROPOSED OFFENSE CLASS

Class C felony for a second or subsequent violation.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.6. Patronizing a prostitute.

DESCRIPTION

A person who has any combination of such number (two?) of convictions under:

1. G.S. 14-203.6 (patronizing a prostitute – Class F, C) and
2. a. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
b. G.S. 14-203.3 (solicitation of a sexual act – Class F, C),
c. G.S. 14-203.4 (promoting prostitution – Class F, C),
d. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1) , or
e. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2).

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

“Combination of convictions” is not defined in the statute. It is not known whether the convictions must be for current offenses or current and prior offenses.

Prostitution is a Class 1 misdemeanor. (G.S. 14-204(5), -208)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.7. Patronizing a minor engaged in prostitution.

DESCRIPTION

A person who

1. engages in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person, or
2. engages in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.7. Patronizing a minor engaged in prostitution.

DESCRIPTION

A person who

1. engages in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person, or
2. engages in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification
3. within 1,000 feet of real property comprising a school.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

“School” is not defined in the statute.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class C felony or a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Note: “School” is not defined in the statute.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.7. Patronizing a minor engaged in prostitution.

DESCRIPTION

A person who

1. engages in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person, or
2. engages in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

PROPOSED OFFENSE CLASS

Class B2 felony for a second or subsequent violation.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 14-203.7. Patronizing a minor engaged in prostitution.

DESCRIPTION

Subsection (c):

A person who has any combination of such number (two?) of convictions under:

1. G.S. 14-203.7 (patronizing a minor engaged in prostitution – Class C, B2) and
2. a. G.S. 14-203.2 (prostitution – Class 1 misdemeanor),
b. G.S. 14-203.3 (solicitation of a sexual act – Class F, C),
c. G.S. 14-203.4 (promoting prostitution – Class F, C),
d. G.S. 14-203.5 (promoting prostitution of a minor – Class B2, B1) , or
e. G.S. 14-203.6 (patronizing a prostitute – Class F, C).

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

“Combination of convictions” is not defined in the statute. It is not known whether the convictions must be for current offenses or current and prior offenses.

Participating in prostitution of a minor is a Class F felony. (G.S. 14-190.19)

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

Subdivision (d)(19a):

A person who

1. violates G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and
2. the offense involved multiple victims.

PUNISHMENT RANGE

CURRENT: Sentenced from the presumptive range as specified in G.S. 15A-1340.17.

PROPOSED: Sentenced from the aggravated range as specified in G.S. 15A-1340.17.

ANALYSIS

Structured sentencing allows for aggravated sentences.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CHANGE THE PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 683 – Safe Harbor/Victims of Human Trafficking [Ed.1]
(cont'd)

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences.

DESCRIPTION

Subdivision (d)(19b):

A person who

1. violates G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and
2. the victim suffered serious injury as a result of the offense.

PUNISHMENT RANGE

CURRENT: Sentenced from the presumptive range as specified in G.S. 15A-1340.17.

PROPOSED: Sentenced from the aggravated range as specified in G.S. 15A-1340.17.

ANALYSIS

Structured sentencing allows for aggravated sentences.

FINDINGS

Bill is **consistent** with G.S. 164-41.

Bill is **inconsistent** with G.S. 164-41.

G.S. 164-41 is not applicable.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 713 – Close ATM Loophole/Copper Purchasing Sites [Ed.1]

STATUTE

§ 66-424. Prohibited Activities and Transactions.

DESCRIPTION

A person who

1. is a secondary metals recycler
2. a. operates or
b. allows the operation of
3. an Automated Teller Machine (ATM)
4. at a fixed site
5. at which the secondary metals recycler purchases regulated metals property.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor for the first offense, a Class I felony for the second or subsequent offense.

ANALYSIS

The Sentencing Commission does not review misdemeanor offense classifications.

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 721 – Election Omnibus [Ed.1]

STATUTE

§ 163-182.1A. Counting of provisional official ballots cast because of failure to provide valid photo identification at the polls.

DESCRIPTION

Subsection (b):

A person who

1. executes a false affidavit in the form prescribed by the State Board of Elections affirming under the penalties of perjury that the voter is the same individual who:
 - a. personally appeared to vote on the day of election or at an any early voting site and
 - b. cast the provisional ballot on that day.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 14-209).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-209, Penalties for perjury, provides that any person who willfully and corruptly commits perjury, on his oath or affirmation, in any suit, controversy, matter or cause, pending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, shall be guilty of a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 721 – Election Omnibus [Ed.1] (cont'd)

STATUTE

§ 163-182.1A. Counting of provisional official ballots cast because of failure to provide valid photo identification at the polls.

DESCRIPTION

Subsection (c):

A person who

1. executes a false affidavit in the form prescribed by the State Board of Elections affirming under the penalties of perjury that:
 - a. the voter is the same individual who:
 1. personally appeared to vote on the day of election or at an any early voting site and
 2. cast the provisional ballot on that day and
 - b. the voter has a sincerely held religious objection to being photographed.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 14-209).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-209, Penalties for perjury, provides that any person who willfully and corruptly commits perjury, on his oath or affirmation, in any suit, controversy, matter or cause, pending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, shall be guilty of a Class F felony.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with the Offense Classification Criteria.
- Offense Classification Criteria are not applicable.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 721 – Election Omnibus [Ed.1] (cont'd.)

STATUTE

§ 13-1. Restoration of citizenship.

DESCRIPTION

A person who

1. is required by this statute to wait five years to have his or her right of citizenship restored
2. applies to the board of elections of the county of that person's residence to have the right restored and
3. presents one or more false affidavits from two registered voters in the county of the applicant's residence, attesting that, to the best of the affiant's knowledge, the applicant is of upstanding moral character.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 14-209).

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

G.S. 14-209, Penalties for perjury, provides that any person who willfully and corruptly commits perjury, on his oath or affirmation, in any suit, controversy, matter or cause, pending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, shall be guilty of a Class F felony.

FINDINGS

Bill is **consistent** with the Offense Classification Criteria.

Bill is **inconsistent** with the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

Note: It is not clear whether the offense is intended to apply to the two registered voters, the person seeking to have his or her right of citizenship restored, or both.

DATE OF REVIEW: 04/19/13

IMPACT ANALYSIS NOT REQUESTED YET